tion, by precedents," it seems strange that the court should have refused to modify the injunction so as to protect the plaintiff's rightful use of their own lands.

MUNICIPAL CORPORATIONS—TORTS—LIABILITY FOR NUISANCE—PRIVATE AND GOVERNMENTAL FUNCTIONS.—The defendant, the city of Coleman, purchased a tract of land adjacent to plaintiff's premises and proceeded to use this tract as a public dump, depositing thereon dead animals and other refuse matter collected from the streets of the city. The plaintiff alleges that, by reason of the offensive nature of the matter deposited thereon, this dumping ground has become a nuisance and has permanently injured his property. *Held*, the city in removing garbage and refuse matter from its streets and depositing it on its dumping ground is engaged, in a corporate, rather than a governmental duty, and is liable in damages for the nuisance thereby created, whether guilty of negligence or not. *City of Coleman* v. *Price* (1909), — Tex. Civ. App. —, 117 S. W. 905.

"The general rule of law undoubtedly is that a municipal corporation has no more right to erect and maintain a nuisance than has a private individual; and an action may be maintained against such corporation for injuries occasioned by a nuisance, in any case in which, under similar circumstances, an action could be maintained against an individual." *City of Fort Worth* v. *Crawford*, 74 Tex. 404, 12 S. W. 52, 15 Am. St. Rep. 840; *Harper* v. *Milwaukee*, 30 Wis. 365; *Brower* v. *Mayor etc. of New York*, 3 Barb. 254. And so long as the city acts in its private, or corporate capacity, the person injured may maintain his action regardless of the negligence, or lack of it, on the part of the city. *Markwardt* v. *City of Guthrie*, 18 Okl. 32, 90 Pac. 26, 9 L. R. A. (N. S.) 1151. The chief contention of the defendant in the principal case was that the city in removing garbage and other refuse matter from its streets was acting in its governmental, rather than its corporate, capacity. Careful search has revealed no cases supporting this view, but we would venture to say, even in the face of the overwhelming weight of authority, that the position of the city is the more logical and more in harmony with the trend of modern thought. Recent decisions have held that supplying water and lighting the streets are governmental functions. *Springfield Fire and Marine Ins. Co.* v. *Keeseville*, 148 N. Y. 46, 42 N. E. 405. It is hard to see wherein the act of keeping the streets free from filth is any less governmental.

PUBLIC OFFICERS—RESIGNATION—REVOCABILITY.—F., the incumbent of an office, tendered to the proper official his resignation which was to take effect at such time as the latter should designate. After acceptance of the resignation but before the date upon which it was to become effective, F. withdrew it. A successor to F. having been appointed, quo warranto proceedings were instituted to determine the rightful claimant to the office. *Held*, F.'s withdrawal of his resignation was effectual and he was therefore still rightfully in office. *State ex rel. Almon* v. *Fowler*, (1909), — Ala. —, 48 South. 985.

The question as to what constitutes a resignation of office and the kindred

question of when and how an accepted resignation may be withdrawn come up before the courts so frequently that it is to be regretted that the law applicable to them is so unsettled. Most of this uncertainty proceeds from the different attitudes taken by the courts as to the nature of the office itself. A court which adheres to the common law rule that a person is compelled to hold office would naturally regard no resignation as complete without acceptance. See *Van Orsdall* v. *Hazard,* 3 Hill 243; *State* v. *Ferguson,* 31 N. J. L. 107; *State* v. *Clayton,* 27 Kan. 442; *State ex rel. Royse* v. *Kitsap County* Sup. Ct. (Wash.), 12 L. R. A. (N. S.) 1010. While those courts which have adopted what might be called the more modern rule that leaves one free to accept or reject an office at his volition quite as naturally deem the resignation complete without acceptance. See *State ex rel. Ryan* v. *Murphy,* — Nev. —, 97 Pac. 391; *United States* v. *Wright,* 1 McLean 509; *Olmstead* v. *Dennis,* 77 N. Y. 378; See 6 MICH. L. REV. 92. Not only is the Alabama court committed to this latter rule (*State* v. *Fitts,* 49 Ala. 402), but the decision under consideration finds its justification only in the further principle that an acceptance of a resignation can have no effect either one way or the other. See *State* v. *Murphy,* supra. And it is alone upon such a view of the law that we can base the conclusion of the court in the principal case that a person may withdraw an accepted prospective resignation without the consent of the accepting official.

TELEGRAPHS AND TELEPHONES—INJURIES FROM CONSTRUCTION AND MAINTENANCE—CARE REQUIRED.—In an action for the recovery of damages for personal injuries received by lightning entering a house through a telephone, *held,* that the failure of the company to provide a proper lightning arrester justified recovery. *Southern Telegraph & Telephone Co.* v. *Evans,* (1909), — Tex. Civ. App. —, 116 S. W. 418.

The rule adopted in the principal case is, that a telephone company placing and maintaining an instrument in the house of a patron must exercise the care of a prudent man under like circumstances and if while in the exercise of such care it had reasonable grounds to apprehend that lightning would be conducted over its wires to and into the house and there do injury, and there were known devices for arresting the lightning, it must exercise due care in selecting and maintaining such approved lightning arresters. *Griffiths* v. *New England Tel. & Tel. Co.,* 72 Vt. 441, 48 Atl. 643, 52 L. R. A. 919; 7 Am. Elec. Cas. 707. This rule is eminently fair and reasonable. *Southern Bell Tel. & Tel. Co.* v. *McTyer,* 137 Ala. 601, 34 South. 1020, 8 Am. Elec. Cas. 591; *Griffin* v. *United Elec. Co.,* 164 Mass. 492, 32 L. R. A. 400, 1 JOYCE, ELECTRIC LAW, § 445f. Electric companies are not bound to have perfect apparatus nor perfect construction, nor necessarily the latest improvements but they are bound to use reasonable care in the construction and maintenance of their lines and apparatus, and they will be responsible for any conduct falling short of this standard. *S. W. Tel. & Tel. Co.* v. *Robinson,* 1 C. C. A. 684, 50 Fed. 810, CROSWELL, LAW OF ELEC., § 234. To say that the agency of the telephone line in the production of the injury was inferior to that of the electric current which was the main cause is not satisfactory. *S. W. Tel.*